

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE**

**Call to Order:** By **CHAIRMAN DONALD L. HEDGES**, on January 25, 2001  
at 3:13 P.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Donald L. Hedges, Chairman (R)  
Rep. Ralph Lenhart, Vice Chairman (D)  
Rep. Darrel Adams (R)  
Rep. Norma Bixby (D)  
Rep. Gilda Clancy (R)  
Rep. Rick Dale (R)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Christopher Harris (D)  
Rep. Verdell Jackson (R)  
Rep. Jim Keane (D)  
Rep. Larry Lehman (R)  
Rep. Holly Raser (D)  
Rep. Clarice Schrumpf (R)  
Rep. Frank Smith (D)  
Rep. Butch Waddill (R)  
Rep. Merlin Wolery (R)

**Members Excused:** Rep. Linda Holden, Vice Chairman (R)  
Rep. Karl Waitschies (R)

**Members Absent:** None.

**Staff Present:** Krista Lee Evans, Legislative Branch  
Robyn Lund, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action: HB 246

**Motion:** REP. ADAMS moved that HB 246 DO PASS.

**Discussion:**

REPRESENTATIVE MERLIN WOLERY offered amendments and moved them.

**Motion:** REP. WOLERY moved AMENDMENTS.

**Discussion:**

Krista Lee Evans gave some information about the amendments. She went through the amendment, which includes 15 parts, and these changes will be shown on the standing committee report, attached to these minutes.

*{Tape : 1; Side : A; Approx. Time Counter : 5.9}*

REPRESENTATIVE DONALD HEDGES stated that open range laws will stay on the books as they are. The amendments then deal mostly with the herd district area of current law.

Ms. Evans clarified that this amendment doesn't affect either the herd district law or the open range law, it simply inserts a section into the Title 27 liability statutes that addresses the relationship between motorists and livestock/property owners.

REPRESENTATIVE DAVE GALLIK stated that he support the amendments and he said that he took his hat off to Rep. Wolery and Rep. Bales for the work that they have done to reach this compromise.

REPRESENTATIVE HOLLY RASER concurred with REP. GALLIK, she appreciates the work that has been done to address the concerns that we had with the bill.

REPRESENTATIVE DARREL ADAMS asked, of Ms. Evans, if these amendments meet with the approval of the livestock owners. Ms. Evans replied that Rep. Bales worked with Rep. Wolery in bringing these forth. She feels that the amendments do meet the approval of the livestock owners.

REPRESENTATIVE CHRISTOPHER HARRIS asked, of REP. WOLERY, if there is a motorist who is not negligent in any way at all, the owner of the property is not grossly negligent, what would be the effect of this amendment if there is a collision with a bull resulting in death or injury to the motorist; what is the liability status of that situation? REP. WOLERY deferred to John Bloomquist. Mr. Bloomquist replied that if the land/livestock owner is not grossly negligent, then they are not liable. REP.

**HARRIS** then asked if it was fair to say that the operator of the vehicle has no recourse for medical expenses or damage to the car. **Mr. Bloomquist** said that was probably correct. In terms of the insurance perspective, it would depend on the insurance coverage.

**REPRESENTATIVE BUTCH WADDILL** asked what the dividing line between negligence and gross negligence is. **Mr. Bloomquist** replied that gross negligence really isn't defined. It is used in a variety of settings where the legislature has elevated what would have to be shown for liability. It is not statutorily defined. The courts have defined gross negligence in a variety of ways as well. He thinks that the best standard is not exorcizing even slight care. Negligence is lack of ordinary care. **REP. WADDILL** asked if the bill, as amended, would it satisfy the livestock owners, concerns too. **Mr. Bloomquist** said it would.

**REP. RASER** offered an analogy to the committee. If she had some trees next to her property and during the night a tree fell down, she didn't know that it had fallen, someone collided with the tree and hurt themselves. It wasn't her fault that the tree fell, it wasn't the motorist's fault that the tree fell. She can see in this situation that she is not grossly negligent as the land owner that had the tree. If, however, she was aware that the tree was in a weakened condition, someone had told her that the tree was going to fall down, and she didn't do anything about it, the tree fell down and the motorist hit it. In this situation it would be gross negligence and she would be liable. This bill addresses some of those concerns. Livestock owners have a certain amount of control over their animals. This is protecting the livestock owner against those accidents that happen out of their control, but it's not overprotecting the people from taking care of their responsibilities. She stated that she sees this as a good compromise.

**REP. HARRIS** responded that this is the only area where we would recognize that there is negligent behavior on the part of the owner and say that you are exempt from liability. The tree analogy, if the wind blows the tree down that is an act of God, not negligence. If there is negligence on the part of the tree owner, there is liability.

**Ms. Evans** said that she feels that it is critical to remember that whether it is a negligence standard or a gross negligence standard, it is a question of fact that can only be determined by the court. It is the standard that must be proved, so they are not immune from liability under this bill if someone hits their livestock. If the court finds that they weren't grossly negligent as the livestock owner, then there is no negligence

assigned on either side and the auto insurance would cover any property or personal damage.

**Vote: AMENDMENT carried unanimously.**

**Motion: REP. ADAMS moved that HB 246 as amended DO PASS.**

**Discussion:**

**REP. HARRIS** said that he was concerned about the gap, which is the situation where a motorist, in no fault of their own, collides with livestock, there is negligence on the part of the owner, and yet there is no recourse for the motorist. He suggested that there be an amendment that would require Montana motorists to have liability insurance that would cover property damage and medical costs in the event of a livestock collision. There would be no cost to the livestock owners, it would be imposed on motorist. He feels that the cost of the insurance would be small because there are few livestock collisions. Since this is probably outside the scope of HB 246, he thinks we should consider a committee bill along those lines.

**REPRESENTATIVE GILDA CLANCY** stated that Montana all ready has a state mandatory insurance law. Liability must be carried on all vehicles. Comprehensive insurance extends to impact with an animal on the road. She doesn't think that there is need for a committee bill. She supports the amended bill.

**REP. GALLIK** stated that he understands the gap the REP. HARRIS was talking about, but in practicality, if there is going to be a lawsuit, whether or not there is a negligence standard or a gross negligence standard, he believes that you will have to prove gross negligence or you are not going to get a favorable verdict. That gap will be closed by the nature of who we are.

**REP. ADAMS** commented that he doesn't feel that we need any more requirements.

**Motion/Vote: REP. LEHMAN moved that HB 246 DO PASS AS AMENDED.**  
**Motion carried 18-1 with Harris voting no.**

**ADJOURNMENT**

Adjournment: 3:40 P.M.

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REP. DONALD L. HEDGES, Chairman

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ROBYN LUND, Secretary

DH/RL

**EXHIBIT** (agh20aad)